

D-3213

RECEIVED
CENTRAL FAX CENTER
JUL 23 2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT

In re application of:
Calvez et al.) Group Art Unit: 2828
)
Serial No. 10/550,846) Examiner: Forde, Delma Rosa
)
Filed: April 17, 2007)
)
For: VERTICAL-CAVITY)
SEMICONDUCTOR)
OPTICAL DEVICES)

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being
facsimile transmitted to the Patent and
Trademark Office fax number 571-273-8300
on the date shown below.

Date:

Name:

July 23 2008
Jarret McAfee

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Dear Sir:

This is in response to the Office Action mailed June 23,
2008, which included an election of species requirement.

The Examiner has required election between Specie I, Fig.
5, drawn to schematic of two further device structures; Specie
II, Fig. 7, drawn to another example of a device according to
the invention; Specie III, Fig. 8, drawn to another example of a
device according to the invention; Specie IV, Fig. 9, drawn to
another example of a device according to the invention; and
Specie V., Fig. 10, drawn to another example of a device
according to the invention.

D-3213

2

Applicant provisionally elects Specie I, Fig. 5, drawn to schematic of two further device structures. The claims that read on Specie I include claims 1-17 and 23-32. Applicant traverses the election of species requirement.

All of the present claims 1-32 are directed to vertical cavity devices and methods for manufacturing vertical cavity devices. Thus, all of the claims are closely related and present no undue burden to the Patent and Trademark Office in considering all the claims in the above-identified application. This is particularly true since each of the independent claims 1, 25 and 32 read on the same species.

As a further point supporting traversal of the election of species requirement, the Examiner's attention is drawn to Article 27 of the Patent Cooperation Treaty (PCT) which forbids imposition by national patent offices of requirements as to the form or content of an application that are different from or in addition to those requirements set out in the PCT and its Regulations.

Thus, applicant submits that Article 27 PCT prevents the U.S. Patent and Trademark Office from applying the U.S. national requirement for election between patentably distinct species in respect to an International Application in the U.S. national phase, such as in the present circumstance, as those U.S. requirements are not found in the PCT. Moreover, no objection of lack of unity of invention under Rule 13 PCT was raised against the above-identified application in the international phase.

Because of Article 27 PCT, the U.S. Patent and Trademark Office is not able to apply national requirements regarding claiming groups of inventions additional to those of Rule 13.2

D-3213

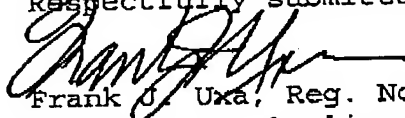
3

PCT. Further, the existence of Rule 13.5 PCT, which allows States to apply the provisions of their national laws relating to the treatment of claims claiming groups of inventions to utility model applications, confirms that States are not allowed to apply the provisions of their national law relating to those matters to patent applications, such as the above-identified patent application.

In view of the above, applicant respectfully requests that the election of species requirement be withdrawn.

Applicant respectfully requests early and favorable action in the above-identified application.

Respectfully submitted,



Frank J. Uxa, Reg. No. 25,612
Attorney for Applicant
4 Venture, Suite 300
Irvine, CA 92618
(949) 450-1750
Facsimile (949) 450-1764